



# California Fair Political Practices Commission

December 23, 1986

Diane Northway  
Palo Alto City Attorney  
P.O. Box 10250  
Palo Alto, CA 94303

Re: Your Request for Advice  
Our File No. I-86-299

Dear Ms. Northway:

You have requested advice on behalf of Jane Goldstein, a member of the Palo Alto Architectural Review Board. Ms. Goldstein has specifically authorized your inquiry concerning her duties under the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

Ms. Goldstein is employed by Stanford University as Alumni Relations Assistant at Stanford Law School. Stanford University owns two major developments in Palo Alto: the Stanford Research Park and the Stanford Shopping Center. You have asked for general guidance concerning whether Ms. Goldstein may participate in decisions on project applications submitted by lessees of Stanford's property at either of these developments.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written assistance. (Section 83114; Regulation 18329(c)(3).)

### CONCLUSION

In general, Ms. Goldstein may participate in decisions on project applications submitted by lessees of Stanford's property at the Stanford Research Park and the Stanford Shopping Center.

### FACTS

#### Architectural Review Board

The Palo Alto Architectural Review Board is required to make recommendations on the design of various types of projects in the City of Palo Alto. The duties of the Architectural Review Board are stated in Chapter 16.48 of the Palo Alto Municipal Code, which you attached to your letter. A recommendation from the Architectural Review Board is a requirement for certain building permits.

There are numerous factors the Architectural Review Board must consider when evaluating a project. These factors are enumerated in Section 16.48.120 of the Palo Alto Municipal Code, and generally fall into three categories: appearance, integration with surroundings, and environmental factors such as conservation of energy and water.

Some of the applicants for design approval from the Architectural Review Board are lessees of property owned by Stanford University. The lessees, and not Stanford, submit the application for project approval.<sup>2/</sup>

#### Stanford University's Real Property

Stanford University's original land grant consists of 8,180 acres in Santa Clara and San Mateo Counties. Stanford's charter prohibits the sale of this land. Accordingly, substantial acreage not now necessary for academic use is leased to various tenants. Two of Stanford's major land

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<sup>2/</sup> You stated in your letter that if Stanford is an applicant for a project before the Architectural Review Board, there is a clear nexus between Stanford and Ms. Goldstein's participation in the decision. We agree that Ms. Goldstein would be required to disqualify herself from participating in decisions when Stanford is the applicant. (Regulation 18702.1(a)(1).)

holdings are used for the Stanford Research Park and the Stanford Shopping Center.

#### Stanford Research Park Leases

The leases at Stanford Research Park are long-term leases. The majority of the leases at the Stanford Research Park are ground leases with terms of from 51 to 99 years. Many of the leases required a prepayment of the ground rent at the beginning of the lease term. The lessee is responsible for the construction of its facilities on the leased parcel. Stanford is not a joint venturer or partner in any lessee's business. The lessees are responsible for taxes, maintenance, operation and other expenses for the leaseholds and improvements. Only at the end of the lease term does Stanford's residual interest become a present interest. The lessees are likely to amortize their improvements over a period of time that is substantially less than the lease term.

There are also three other types of leases at the Stanford Research Park:

- (1) Base rent with a consumer price index adjustment.
- (2) Base rent with a consumer price index adjustment against a percentage of gross rent.<sup>3/</sup>
- (3) Base rent that is adjusted based on reappraisals of the value of the land. The value of improvements does not affect the amount of rent due. These leases may include consumer price index and/or percentage of rent provisions.

#### Stanford Shopping Center Leases

There are approximately five stores in the Stanford Shopping Center which have long-term leases similar to the leases at the Stanford Research Park. These lessees built their own buildings on the leased parcels.

The majority of lessees at the Stanford Shopping Center are smaller stores with intermediate-term leases. These leases

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<sup>3/</sup> This type of lease applies to lessees who sublease all or a portion of the property they lease from Stanford. The sublessors pay Stanford the base rent with a consumer price index adjustment, or a percentage of the gross rents they receive, whichever is greater.

generally include a minimum rent plus a percentage of the lessee's gross sales. Until the lessee opens for business, the minimum rent is not subject to adjustment.

Stanford built the original shell space for the smaller tenants at the Stanford Shopping Center. The typical lessee's application involves design of the storefront. You have informed us that approximately 90 percent of these decisions are approved on the consent calendar.

Some of the Stanford Shopping Center lessees who lease space constructed by Stanford have more complex applications. These lessees may be somewhat larger stores than the typical lessee involved in a storefront design application. Similarly, when a larger space is broken down into several smaller spaces, the design review decisions are more involved than for the small storefront applicant.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using her official position to influence any governmental decision in which she knows or has reason to know she has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on, among other economic interests, any source of income aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)

Ms. Goldstein receives an annual salary from Stanford in excess of \$250 for her position as Alumni Relations Assistant at Stanford Law School. Accordingly, Ms. Goldstein must disqualify herself from participating in any decision of the Architectural Review Board which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on Stanford University. Effects on Stanford's lessees must be distinguished from effects on Stanford. A material financial effect on the lessee of the property will not necessarily result in a material financial effect on Stanford's revenues or assets.

The design review decisions in question will affect only the real property located in the Stanford Research Park or the Stanford Shopping Center. Any effects of these decisions on Stanford will therefore be distinguishable from the effects on

the general public in Palo Alto. Whether a particular Architectural Review Board decision will have a financial effect on Stanford which is both material and reasonably foreseeable is a more difficult question to resolve.

Whether an effect is reasonably foreseeable depends on the facts and circumstances of each specific situation. Section 87103 does not require that the financial effect be certain; a substantial likelihood or probability is sufficient. (Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, December 4, 1975).) All possible effects of the decision, not just the intended effects, must be analyzed. However, effects remote in time or speculative in nature are not reasonably foreseeable. As you have not informed us of any specific decisions affecting Stanford's lessees, we can provide only a general discussion of potential effects.

Various effects on Stanford are possible as a result of Architectural Review Board decisions on lessees' applications. The Architectural Review Board could decide to impose additional conditions on a lessee, thereby delaying the lessee's ability to open its business. In the Stanford Shopping Center, where Stanford's lease agreement with the lessee is often based on a percentage of gross profits in addition to minimum rent, a delay in the lessee's ability to conduct business would result in a delay in profits. This delay in profits could affect the amount of rent Stanford receives.

If the Architectural Review Board's decision to impose additional conditions on a lessee resulted in significant cost to the lessee, or substantial delays in the lessee's ability to commence its business, the lessee may have no realistic option but to terminate its lease with Stanford and seek a different location. The termination of the lease could result in Stanford incurring additional costs, such as legal costs resulting from the breach of contract and the expense of finding a new tenant.

The imposition of additional conditions could also result in more costly improvements to Stanford's property. If the lessees in the Stanford Research Park who are constructing their own buildings are required to construct more valuable improvements, the value of Stanford's residual interest in those improvements also could be increased.

While these effects on Stanford are possible, you have provided no facts to indicate there is a substantial likelihood

they will occur. In most cases, it is not reasonably foreseeable that these possible effects would occur as a result of Architectural Review Board decisions. For example, in the case of the long-term leases, which are primarily at the Stanford Research Park but also exist at the Stanford Shopping Center, the effects of design decisions of the Architectural Review Board on Stanford's residual interest in the improvements are speculative. In the case of the intermediate-term leases, many of which are based on a percentage of gross profits, it is difficult to foresee a link between the types of decisions made by the Architectural Review Board regarding the typical storefront application and the profits of the lessees. On the more complex shopping center decisions, if an Architectural Review Board decision would significantly delay a lessee's opening for business, the amount of rent Stanford would receive could be affected. However, even if a particular decision would have a reasonably foreseeable effect on Stanford, the effect must also be material before Ms. Goldstein would be disqualified from participating in the decision.

The effect of a decision on Stanford will be considered material if the effect is significant. (Regulation 18702(a), copy enclosed.) If the decision would affect the value of Stanford's real property, the guidelines contained in Regulation 18702(b)(2) are helpful in determining whether an effect is significant.<sup>4/</sup>

In summary, we conclude that, in general, it is not reasonably foreseeable that Stanford University will experience a material financial effect as a result of the Architectural Review Board's decisions concerning project applications submitted by lessees at the Stanford Research Park or the Stanford Shopping Center. Accordingly, in most instances, Ms. Goldstein may participate in those decisions. If it appears that Stanford's rental income or real property holdings are likely to increase significantly in value as a result of a

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<sup>4/</sup> These guidelines are specifically applicable to decisions affecting a public official's real property. However, we also have used them for guidance when a decision could affect real property owned by a source of income to the official or a business entity in which the official has an ownership interest. (See, e.g. Katz Advice Letter (No. A-84-112); Sprague Advice Letter (No. A-86-260); copies enclosed.)

Diane Northway  
December 23, 1986  
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particular decision, you should contact us for more specific advice.

If you have any questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*  
By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh  
Enclosure



OFFICE OF  
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250 HAMILTON AVENUE  
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F P P C  
OCT 27 5 54 AM '86

October 24, 1986

Ms. Kathryn Donovan  
Fair Political Practices Commission  
Post Office Box 807  
Sacramento, California 95804

Re: Request For Advice Pursuant to Government  
Code §83114 On Behalf of Jane Goldstein

Dear Ms. Donovan:

I am requesting advice pursuant to Government Code §83114 on behalf of Ms. Jane Goldstein, a member of our Architectural Review Board. The Architectural Review Board is responsible for design review of public and private development projects in the City of Palo Alto. Enclosed is a copy of Chapter 16.48 of the Palo Alto Municipal Code, setting forth the duties and responsibilities of the Board. (Attachment 1)

Ms. Goldstein has recently taken a position with Stanford University as an Alumni Relations Assistant at Stanford Law School. The salary and duties for this position are described on the attached vacancy announcement for that position. (Attachment 2)

Stanford University is a major land holder in this area. It has entered into long term leases with many companies in the Stanford Research Park and the Stanford Shopping Center, both of which are located in the City of Palo Alto. It has also entered into many intermediate term leases with merchants in the shopping center. Often these lessees (not Stanford) are applicants for architectural review for remodeling of existing facilities or construction of new facilities in the Park or Shopping Center. When Stanford is an applicant for a project before the Architectural Review Board there is a clear nexus between Stanford and Ms. Goldstein's participation in the decision, but in cases where Stanford is the landowner but not the applicant, the relationship with Stanford is more tenuous.

A. Stanford leases land to tenants in the Industrial Park under triple net leases that fall into the following four categories:



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Ms. Kathryn Donovan  
Fair Political Practices Commission

Re: Request For Advice Pursuant to Government  
Code §83114 On Behalf of Jane Goldstein

- 1) Prepaid leases with terms of either 99 years or 51 years. The majority of leases in the Park are in this category.
- 2) Base rent with a consumer price index (CPI) adjustment.
- 3) Base rent with CPI adjustment against a percentage of gross rent.
- 4) Base rent that is adjusted based on reappraisals of the value of the land. These leases may include CPI and percentage of rent provisions.

B. Stanford's other major land holding within Palo Alto is the Stanford Shopping Center. Generally, leases at the Shopping Center include a minimum rent against percentage of gross sales in excess of the minimum rent. The major Shopping Center tenants (approximately 5 stores) generally have long-term leases while the small tenants generally have intermediate leases. The usual Shopping Center application would involve design of the store front.

I am enclosing a letter addressed to me from Jasper Williams, Associate Staff Counsel for Stanford University, which provides supplemental information regarding the lease arrangements discussed in this opinion request. (Attachment 3)


On behalf of Ms. Goldstein, we would like your advice with respect to her participation on the Architectural Review Board applications from lessees of Stanford University at the Industrial Park and at the Shopping Center. Does Ms. Goldstein's employment with Stanford University preclude her participation as an Architectural Review Board member in decisions on applications to the Board by lessees of Stanford University in any of the categories enumerated in Sections A and B above?

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October 24, 1986  
Ms. Kathryn Donovan  
Fair Political Practices Commission

Re: Request For Advice Pursuant to Government  
Code §83114 On Behalf of Jane Goldstein

If you require any additional information or detail about the various leases in order to complete your analysis of this issue, we will do our utmost to provide the same.

Very truly yours,

  
DIANE NORTHWAY  
City Attorney

DN/bb

cc: Jane Goldstein



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Nov 6 8 45 AM '86

November 4, 1986

Diane M. Griffiths, Esq.  
General Counsel  
California Fair Political  
Practices Commission  
Post Office Box 807  
Sacramento, California 95804-0807

Re: Jane Goldstein/86-299

Dear Ms. Griffiths:

I am in receipt of your letter of October 30th and am providing a copy of the same to Ms. Goldstein along with this letter.

Ms. Goldstein was appointed to the Architectural Review Board by the Council of the City of Palo Alto. As a member of this Board she requested my assistance, as City Attorney, in obtaining an opinion from your office. Ms. Goldstein has authorized me to request advice as set forth in my letter dated October 24, 1986.

You may contact Ms. Jane Goldstein at 251 Tennyson Avenue, Palo Alto, California 94301, telephone 415/321-7608.

Very truly yours,

*Diane Northway*  
DIANE NORTHWAY  
City Attorney

DN/bb

CC: Ms. Jane Goldstein

Enclosure



# California Fair Political Practices Commission

October 30, 1986

Diane Northway  
Palo Alto City Attorney  
P.O. Box 10250  
Palo Alto, CA 94303

Re: 86-299

Dear Ms. Northway:

Your letter requesting advice under the Political Reform Act was received on October 27, 1986, by the Fair Political Practices Commission. Commission Regulation 18329(b)(2) (copy enclosed) requires a request for formal written advice to include a specific statement that you have been authorized to request the advice by the person whose duties under the Act are in question. Please send us a supplemental letter stating that you are so authorized by the official on whose behalf you have requested advice. Please also include in your letter the mailing address of the official.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days after we receive your supplemental letter. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Jane Goldstein

Chapter 16.48

ARCHITECTURAL REVIEW <sup>6</sup>

Sections:

- 16.48.010 Declaration of goals and purposes.
- 16.48.020 Architectural review board.
- 16.48.030 Manner of appointment.
- 16.48.040 Procedures of the architectural review board.
- 16.48.050 Applicability of chapter.
- 16.48.060 Application.
- 16.48.070 Recommendation of the architectural review board.
- 16.48.080 Action of the director of planning and community environment.
- 16.48.090 Appeals.
- 16.48.100 Referral to council.
- 16.48.110 Preliminary review.
- 16.48.120 Standards for review.
- 16.48.130 Time limits.
- 16.48.140 Integration with other code provisions.
- 16.48.150 Moratorium.

**16.48.010 Declaration of goals and purposes.** The goals and purposes of this chapter are to:

- (a) Promote orderly and harmonious development of the city;
- (b) Enhance the desirability of residence or investment in the city;
- (c) Encourage the attainment of the most desirable use of land and improvements;
- (d) Enhance the desirability of living conditions upon the immediate site or in adjacent areas; and
- (e) Promote visual environments which are of high aesthetic quality and variety and which, at the same time, are considerate of each other. (Ord. 3416 § 1 (part), 1983).

**16.48.020 Architectural review board.** There is created an architectural review board consisting of five persons, at least three of whom shall be architects, landscape architects, building designers or other design professionals. Each member of the architectural review board shall be appointed by the city council and shall serve, commencing on the first day of October, for a term of three years or until his or her successor is appointed and takes office. The architectural review board shall have the powers and duties specified in this chapter, and shall comply with the procedures specified in this chapter. (Ord. 3416 § 1 (part), 1983).

6. Prior ordinance history: Ord. 2703 as amended by Ords. 2717, 2847, 2863, 2927, 2960, 2984, 3197, 3243 and 3333.

16.48.030-16.48.050 BUILDING REGULATIONS

**16.48.030 Manner of appointment.** In filling vacancies on the architectural review board, the following procedures shall be followed by the city council:

(a) Following notification of vacancy on the architectural review board, the city clerk shall advertise the same in a newspaper of general circulation in the city, including the council agenda digest, four times within two weeks.

(b) Written nominations and applications shall be submitted to the city clerk within such two-week period, to be forwarded to the city council for its consideration. Notwithstanding the foregoing, if the nomination or application of an incumbent board member is not submitted to the city clerk within the period specified above, said period shall be extended for an additional five days during which the city clerk shall accept written nominations and applications of nonincumbents.

(c) The city council shall review all nominations and applications and conduct such interviews as it deems necessary prior to selection.

(d) Final selection and appointment shall be made by the city council at a regular city council meeting after the period for submittal of nominations and applications has expired. (Ord. 3416 § 1 (part), 1983).

**16.48.040 Procedures of the architectural review board.** The architectural review board shall meet at least monthly and shall prescribe bylaws, forms, applications, rules and regulations for the conduct of its business. All meetings of the architectural review board shall be open to the public. The agendas for regular architectural review board meetings, with information on those projects on which staff recommends mitigated negative declarations, shall be published once in a local newspaper of general circulation not less than four days prior to the date of the meeting and shall be provided to the city council in the next available council packet.

The architectural review board shall send a report, not less than once a year, to the planning commission and city council for the purpose of communicating the concerns of the board with respect to the city's plans, policies, ordinances and procedures as these affect the projects which the board reviews. (Ord. 3416 § 1 (part), 1983).

**16.48.050 Applicability of chapter.** No permit required under Title 16 shall be issued except after approval of the design of the project by the director of planning and community environment, or by the city council, as the case may be, upon a recommendation of the architectural review board, in compliance with this chapter. The architectural review board shall make a recommendation on the design of all of the following projects:

(a) New construction, including public projects and construction on public property, and including paved areas, exterior work and signs which require a permit from the city, but excepting singly developed single-family dwellings and duplexes, and additions thereto;

(b) Unless the application is diverted for administrative approval

pursuant to Chapter 18.99, a PC district or any amendment thereto, applied for pursuant to Chapter 18.68,

(1) Any application for approval of or amendment to a PC district shall initially be reviewed by the planning commission for conformance with Chapter 18.68, then the development plan shall be reviewed by the architectural review board for compliance with this chapter, and finally the development plan shall be returned to the planning commission for a final recommendation to the city council.

(2) In the event the planning commission, at its initial review, recommends denial of the application, such recommendation shall be forwarded directly to the city council, and the architectural review board shall make no recommendation on the application except as may be directed by the city council.

(3) In the event of inconsistencies in the recommendation of the architectural review board on a PC application, the commission and board shall attempt to resolve such inconsistencies prior to the commission's making a final recommendation to the city council, by means which may include a joint meeting. If the inconsistencies are not resolved, then the separate recommendations of each body, together with the minutes of their respective meetings and/or of the joint meeting shall be transmitted to the city council;

(c) Unless the application is diverted for administrative approval pursuant to Chapter 18.99, any development, construction or improvement in any OS district, AC district or any district which is combined with a D district, except singly developed single-family dwellings, duplexes and accessory buildings and uses thereto, or any gasoline service station which must be approved pursuant to Chapter 18.82, as required in the CN, CC, CS, GM and LM zones,

(1) Any such development, construction, improvement or gasoline service station shall initially be reviewed by the planning commission pursuant to Chapter 18.82 and then shall be reviewed by the architectural review board for compliance with this chapter before final action by the city council.

(2) In the event the planning commission, at its initial review, recommends denial of the application, such recommendation shall be forwarded directly to the city council, and the architectural review board shall make no recommendation on the application except as may be directed by the city council.

(3) In the event of inconsistencies in the recommendation of the planning commission and the recommendation of the architectural review board, the commission and board shall attempt to resolve such inconsistencies prior to forwarding the application to the city council by means which may include a joint meeting. If the inconsistencies are not resolved, then the separate recommendations of each body, together with the minutes of their respective meetings and/or of the joint meeting shall be transmitted to the city council;

16.48.060-16.48.070 BUILDING REGULATIONS

(d) Fences when, in the discretion of the chief building official, they may have a significant effect upon the aesthetic character of the city and/or the surrounding area;

(e) Projects requiring variances or use permits when, in the discretion of the zoning administrator or the director of planning and community environment, they may have a significant effect upon the aesthetic character of the city or the surrounding area;

(f) The foregoing requirements notwithstanding, the director of planning and community environment may approve or disapprove the design of a minor change without procuring a recommendation of the architectural review board under the following circumstances:

(1) The director determines that the change requested is minor, of little visual significance and will not materially alter the appearance of previously approved improvements; and

(2) Either the architectural review board agendas are such that rapid review of the change before the board is not possible or the board has recommended to the director that no further architectural review board review is necessary;

(g) In addition to the foregoing requirements, the director of planning and community environment or city council may request the opinion of the architectural review board on other architectural matters. (Ord. 3416 § 1 (part), 1983).

**16.48.060 Application.** Applications for design review of a project shall be filed with the planning department along with a fee as set forth in the municipal fee schedule. Once the application is deemed complete by the director of planning and community environment, the director shall review the application and, pursuant to the California Environmental Quality Act (CEQA), shall, if the project is not exempt from CEQA, either prepare a negative declaration or require an environmental impact report to be prepared. If an environmental impact report is required, the procedures set forth in the state guidelines and the City of Palo Alto's Procedures for Implementation of the California Environmental Quality Act of 1970 shall be followed. If no environmental impact report is required, the application will be placed on the agenda of the architectural review board no later than the regular meeting following the sixteenth working day after receipt of the application, provided that, for good cause, the director of planning and community environment shall have the discretion to place the application on a later agenda. (Ord. 3416 § 1 (part), 1983).

**16.48.070 Recommendation of the architectural review board.** The architectural review board shall recommend to the director of planning and community environment that the design of and negative declaration, if applicable, for a project be approved, disapproved or approved with modifications, including the imposition of conditions, all in accordance with the standards contained in this chapter, and such additional standards as may be



adopted and published by the city council from time to time. Except for large and complex projects, the architectural review board shall make a recommendation on a project within two meetings or thirty days from the first consideration of the application, whichever occurs later, unless the applicant consents to further continuance; however, no application may be continued to a date more than six months after the date of the board's first meeting on an application. Notwithstanding the foregoing, the time period established in this section shall be suspended during the review of an application by the historic resources board pursuant to Chapter 16.49. (Ord. 3416 § 1 (part), 1983).

**16.48.080 Action of the director of planning and community environment.** (a) No later than three working days after the architectural review board's recommendation on the design and negative declaration, if applicable, for a project, the director of planning and community environment shall take one of the following actions and notify the applicant in writing of the decision:

(1) If the director agrees with the recommendation of the board, he shall act accordingly on the project and negative declaration, if applicable.

(2) If the director disagrees with the recommendation of the board, he shall, at his discretion, either attempt to resolve the differences with the board at the next available board meeting or shall refer the decision directly to the city council.

(A) If the differences are resolved at the next available board meeting, the director shall act accordingly on the project and negative declaration, if applicable, and notify the applicant in writing of the decision.

(B) If the director refers the decision directly to the city council, the council shall act on the application pursuant to Section 16.48.090.

(C) If the director attempts to resolve the differences at the next available board meeting but the differences are not resolved, the application shall be sent to the city council with the recommendations of the board and the recommendations of the director of planning and community environment, and the council shall act on the application pursuant to Section 16.48.090.

(b) The minutes from the architectural review board meetings, including notice of the action of the director of planning and community environment on each item shall be placed in the city council packet as soon as they are available.

(c) Building permits for an approved project may be issued fifteen days after the date of the architectural review board's recommendation on a project, unless the decision is referred to the city council pursuant to subsection (a)(2) of this section or appealed, pursuant to Section 16.48.090. Building permits for minor projects, as defined in Section 16.48.090, may be issued five days after the decision of the director of planning and community environment, unless the decision is appealed pursuant to Section 16.48.090.

16.48.090-16.48.100 BUILDING REGULATIONS

If the decision is referred or appealed, building permits may be issued only after city council approval of the project. (Ord. 3416 § 1 (part), 1983).

**16.48.090 Appeals.** Any person aggrieved by the action of the director of planning and community environment may file an appeal with the city council, not later than fifteen days after the date of the architectural review board's recommendation on a project; except that an appeal of a minor project shall be filed not later than five days following the action of the director of planning and community environment. "Minor projects" for the purpose of this chapter, are signs, buildings of less than five thousand square feet, and other projects designated as minor by the director and consistent with written guidelines developed by the director in conjunction with the architectural review board. Any such appeal shall be filed with the city clerk, along with a fee as set forth in the municipal fee schedule; however, any member of the city council may file such an appeal without a fee. Any appeal shall be considered an appeal of both the negative declaration, if applicable, and the design of the project. The city clerk shall place the appeal upon the agenda of the city council for a regular meeting not later than the thirty-first working day after the receipt of the appeal. If the appellant is other than the applicant for the project, the city clerk shall notify the applicant of the appeal. The city council may take one of the following actions:

(a) Pursuant to CEQA, require an environmental impact report be prepared on the project before the city council approves or disapproves the project;

(b) Disapprove the project;

(c) Approve the negative declaration, if applicable, and approve, or approve with modifications, the project.

Before taking action on an appeal, the city council may, in its discretion, refer the appeal to the planning commission for a recommendation. (Ord. 3416 § 1 (part), 1983).

**16.48.100 Referral to council.** Instead of making a recommendation on the design of a project and the negative declaration, if applicable, to the director of planning and community environment pursuant to Section 16.48.070, the architectural review board may determine that the planning issues involving a project merit review by the planning commission and city council. In that case, the architectural review board shall make a recommendation on the design of the project and the negative declaration, if applicable. These recommendations shall be transmitted to the planning commission and shall be placed on the agenda of the planning commission within two months after the architectural review board's referral. The planning commission shall make a recommendation on the project and the negative declaration, if applicable. The recommendations of both the architectural review board and the planning commission shall be transmitted to

the city council for action. The city council may take one of the following actions:

(a) Pursuant to CEQA, require an environmental impact report be prepared on the project before the city council approves or disapproves the project;

(b) Disapprove the project;

(c) Approve the negative declaration, if applicable, and approve, or approve with modifications, the project.

Before approving, or approving with modifications, the project, the council may refer the project's design back to the architectural review board for additional recommendations. The board shall make its recommendation directly to the council. (Ord. 3416 § 1 (part), 1983).

**16.48.110 Preliminary review.** For the purpose of securing the advice of the architectural review board prior to making an application for the board's recommendation on a project, an applicant, upon paying a preliminary application fee, as set forth in the municipal fee schedule, may bring a design before the board for preliminary review. If the applicant wishes to proceed with the project, he or she must then file an application and pay a regular application fee. The comments of the architectural review board members during a preliminary review shall not be binding on their formal recommendation. (Ord. 3416 § 1 (part), 1983).

**16.48.120 Standards for review.** (a) In addition to the goals and purposes of this chapter as set forth in Section 16.48.010, the following standards shall be used by the architectural review board in reviewing projects within its jurisdiction:

(1) Whether the design is consistent and compatible with applicable elements of the city's comprehensive plan;

(2) Whether the design is compatible with the immediate environment of the site;

(3) Whether the design is appropriate to the function of the project;

(4) In areas considered by the board as having a unified design character or historical character, whether the design is compatible with such character;

(5) Whether the design promotes harmonious transitions in scale and character in areas between different designated land uses;

(6) Whether the design is compatible with approved improvements both on and off the site;

(7) Whether the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community;

(8) Whether the amount and arrangement of open space are appropriate to the design and the function of the structures;

(9) Whether sufficient ancillary functions are provided to support

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the main functions of the project and whether the same are compatible with the project's design concept:

(10) Whether access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles;

(11) Whether natural features are appropriately preserved and integrated with the project;

(12) Whether the materials, textures, colors and details of construction and plant material are appropriate expression to the design and function and whether the same are compatible with the adjacent and neighboring structures, landscape elements and functions;

(13) Whether the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site;

(14) Whether plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which would tend to be drought-resistant and to reduce consumption of water in its installation and maintenance;

(15) Whether the design is energy efficient and incorporates renewable energy design elements including, but not limited to:

(A) Exterior energy design elements.

(B) Internal lighting service and climatic control systems, and

(C) Building siting and landscape elements.

(b) In applying the standards set forth in subsection (a) of this section, the architectural review board may review each of the following items of the proposed project:

(1) Uses and functions as they relate to the design of the project and adjacent uses:

(2) Compatibility with neighboring properties and uses;

(3) Visibility and effect upon view at all site lines;

(4) Aesthetics;

(5) Quality of design;

(6) Character;

(7) Scale;

(8) Building materials;

(9) Color; and

(10) Site development characteristics including, but not limited to:

(A) Lot size,

(B) Building coverage,

(C) Setbacks,

(D) Building height,

(E) Location upon the site,

(F) Open space, and

(G) Pedestrian, bicycle and vehicle circulation;

(11) Environmental factors including, but not limited to:

- (A) Noise.
- (B) Emission of smoke, fumes and odors.
- (C) Fire safety, life safety and fire access.
- (D) Disturbance of existing topography, trees, shrubs, and other natural features.
- (E) Water percolation, grading and drainage, and impermeability of soils:
- (12) Building and building components including, but not limited to:
  - (A) Stairs, ramps, escalators, moving sidewalks, elevators or downspouts on the exterior buildings.
  - (B) Flues, chimneys, exhaust fans, air-conditioning equipment, elevator equipment, fans, cooling towers, antennae or similar structures placed upon the roof or the exterior of the building.
  - (C) Sun shades, awnings, louvers or any visible device for deflecting, filtering or shielding the structure or interior from the elements.
  - (D) Balconies, penthouses, loading docks or similar special purpose appendages or accessory structures:
- (13) Accessory structures, including garages, sheds, utility facilities and waste receptacles:
- (14) Other on-site improvements including, but not limited to:
  - (A) Parking and other paved areas.
  - (B) Landscaping.
  - (C) Lighting.
  - (D) Signs and graphics, and
  - (E) Artwork, sculpture, fountains and other artistic features:
- (15) Energy efficiency and renewable energy design elements including, but not limited to:
  - (A) Exterior energy design elements.
  - (B) Internal lighting service and climatic control systems, and
  - (C) Building siting and landscaped elements:
- (16) Such other features as affect the design and ultimate appearance of the work, as determined by the architectural review board.

(c) The architectural review board may recommend requirements which are more restrictive than the maximum regulations set forth in Title 16 and/or Title 18 of this code, when it concludes such requirements are necessary (1) to promote the internal integrity of the design of the project; (2) to assure compatibility of the proposed project's design with its site and surroundings; and (3) to minimize the environmental effects of the proposed project. (Ord. 3486 § 1, 1983; Ord. 3416 § 1 (part), 1983).

**16.48.130 Time limits.** For all projects approved after the effective date of the ordinance codified in this chapter, the approval shall be valid for one year from the original date of approval, except that for phased projects, a specific development schedule may be approved. In no event, however, shall such a development schedule exceed five years from the original date of approval. Approval of minor changes in a project pursuant to Section

## VACANCY ANNOUNCEMENT

POSITION: ALUMNI/AE RELATIONS ASSISTANT (Office Assistant III)

SALARY RANGE: \$1071 - 1127.25/Month, 75% time

Stanford Law School is currently seeking candidates for the position of Alumni/ae Relations Assistant.

### GENERAL BACKGROUND

The Law School Alumni/ae Relations Assistant provides administrative and other support services to the Director of Alumni/ae Relations. The office develops programs involving alumni/ae, faculty and students, as well as special large projects such as planning donor related trips for the Dean.

### RESPONSIBILITIES

- Research and maintenance of an elaborate file of background information on alumni/ae.
- Heavy telephone and written communication with a variety of people in handling requests for information, purchase of mementos, and making reservations.
- Completing all university forms to secure and pay for goods and services with events and publications; collection and deposit of receivables; and detailed record keeping for budgets.
- Using Wordstar and Dataease on an IBM pc to research, update, and review alumni/ae information.

### QUALIFICATIONS

Office may have many different projects in various stages of development. Work can be fragmented and with constant interruption. Assistant needs to be detail oriented and organized. Wordprocessing skills highly desirable. Strong interpersonal skills required. Needs to possess good telephone manner and writing skills.

### TO APPLY

Applicants should send a Stanford application and/or resume to:

Glenda Greer  
Stanford Law School  
Crown Quad, rm 109  
Stanford, CA 94305

(Attachment 2)

STANFORD UNIVERSITY

OFFICE OF THE  
VICE PRESIDENT AND GENERAL COUNSEL

October 23, 1986

PO. BOX N  
STANFORD, CALIFORNIA 94305  
415 723-9611

Ms. Diane Northway  
City Attorney  
City of Palo Alto  
250 Hamilton Avenue  
P.O. Box 102050  
Palo Alto, CA 94303

Dear Ms. Northway:

Re: Conflict of Interest Opinion for Jane Goldstein

Thank you for sending me a copy of your draft opinion request on the question of whether Ms. Jane Goldstein, an employee of Stanford University as an alumni relations assistant and a member of the Palo Alto Architectural Review Board (Board), has a conflict of interest in voting on projects that are located on Stanford Research Park and Stanford Shopping Center leaseholds for which the applicants are independent lessees.<sup>1/</sup> I write to provide some additional information that has a bearing on the question of whether "it is reasonably foreseeable" that a decision by a member of the Board regarding such an application "will have a material financial effect [on Stanford], distinguishable from its effect on the public generally". (Government Code Section 87103)

The financial effect, if any, to Stanford of design decisions regarding construction or renovations at the Stanford Research Park and the Stanford Shopping Center is speculative in view of the terms of the leases; it may follow from this speculative character that decisions by the Board do not meet the reasonable foreseeability and material financial effect requirements of Section 87103.

The terms and conditions of Stanford's leases in the Research Park put the lessees in a position which approximates to a great extent that of a fee owner. These leases are ground leases with terms of from 51 to 99 years; many of them required a prepayment of the ground rent at the beginning of the lease term. The

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<sup>1/</sup> Stanford's charter prohibits the sale of its original land grant which now consists of 8,180 acres in Santa Clara and San Mateo counties. Accordingly, substantial acreage not now necessary for academic use is leased to various tenants.

Diane Northway  
City of Palo Alto  
Re: Conflict of Interest/Jane Goldstein

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tenant is responsible for the construction of its facilities on the leased parcel. Stanford is not a joint venturer or partner or otherwise a participant in the businesses of the subject lessees. If such lessees do well, the profits accrue to their benefit, and if they do badly they are solely responsible for the losses.

Stanford's current income from the Park derives primarily from ground rents which are agreed to (with periodic adjustments in some cases) prior to execution of the leases. An analytically apt way to look at the rent adjustment provisions is that they are means to keep the level of rent to Stanford constant in real dollars. The lessees are responsible for taxes, maintenance, operation and other expenses for the leaseholds and improvements. Only at the end of the lease term does Stanford's residual interest become a present interest. The lessees are likely to amortize their improvements over a period of time that is substantially less than the lease terms. If at the lapse or termination of the lease term the improvements are obsolete or in disrepair, they may have a negative residual value. Although it also is possible that there will be a positive salvage value for the improvements, it would be conjectural to attribute any fraction of the rents or salvage value to a Board design decision. Such an attribution would be highly speculative, of dubious certainty and incapable of measurement.

A similar conclusion can be drawn with respect to the Shopping Center leases. Most Shopping Center leases include rent based on a percentage of the tenant's gross sales in addition to minimum fixed rent. Also, because of the common areas in the Shopping Center and the nature of the Shopping Center, the expenses for maintenance of common areas are shared and the leases contain more detailed covenants on permissible tenant conduct.<sup>2/</sup> Percentage rentals are, of course, another means of maintaining the real dollar value of rent in view of possible inflation. Since a merchant's success depends on a panoply of factors, including most importantly the service and merchandise it offers, it would be speculative at best to link the Board's design decisions for Shopping Center tenant improvements to a material financial effect on Stanford.

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<sup>2/</sup> The shell space for the small Shopping Center tenants was originally built by Stanford while the major tenants in the Center and the lessees in the Research Park built their own buildings.



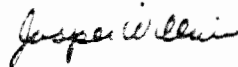
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Finally, I would point out that the described lessor-lessee relationships result in tax exempt income to tax exempt entities under Section 512 of the Internal Revenue Code. While I do not want to get into a discussion of the policy underlying this tax treatment, in general terms it is in part a function of the fact that under these arrangements a tax exempt entity is not a proximate direct beneficiary of the lessees' business decisions or a participant in their businesses. Perhaps the Fair Political Practices Commission will find this comparison to Federal tax treatment useful.

I hope that you find these ideas helpful in making your request to the Fair Political Practices Commission.

Sincerely yours,



Jasper Williams  
Associate Staff Counsel